

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

Crl.L.P..No. 173 of 2007()

CC.789/2003 of J.M.F.C., KODUNGALLUR
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PETITIONER/COMPLAINANT

EZHAVA SEVA SANGHAM, A REGISTERED
SOCIETY, FUNCTIONING IN THE ADDRESS EDAVILANGU
VILLAGE, KODUNGALLUR TALUK, REP.BY ITS SECRETARY
P.K.VASU.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: ACCUSED & STATE

1. AJITH, S/O SURENDRAN,
RAMANKULATHU HOUSE, VELLAMGALLUR,
KOTTENELLUR, VADAKUMKARA, THRISSUR DISTRICT.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2-BY P.P.SRI.P. RAVIANDRA BABU

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION
ON 16/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. THANKAPPAN, J.

CrL.L.P.NO.173 OF 2007

Dated this the 16th day of March, 2007.

O R D E R

This is an application for special leave to appeal against the judgment in C.C.No.789/2003 on the file of the Judicial Magistrate of First Class, Kodungallur. The petitioner/complainant filed a complaint before the court below alleging that while the 1st respondent was working as a Secretary of the petitioner society, he himself misappropriated the funds of the society by falsifying the accounts of the society. To prove the case against the 1st respondent, the petitioner/complainant examined Pws 1 to 3 and produced Exts.P1 to P10. On closing the evidence of the petitioner/complainant, the trial court questioned the 1st respondent under Section 313 of the Code of Criminal Procedure. The 1st respondent denied all the allegations levelled against him and stated that the case was foisted against him by the petitioner/complainant. On considering the entire evidence, the trial court found that the petitioner/complainant failed to prove any case against the

1st respondent by adducing cogent legal evidence either oral or documentary. Hence, the trial court acquitted the 1st respondent. Against that acquittal, this appeal is being attempted to.

2. This Court heard the learned counsel appearing for the petitioner/complainant and perused the records made available to the court. The trial court considered each and every piece of evidence adduced by the petitioner/complainant and found that there is no evidence to show that the 1st respondent had falsified any of the accounts of the society and misappropriated any amount as alleged in the complaint. This finding is on the evidence that the complainant did not produce any account of the society to show that the falsification has been done by the 1st respondent. Further, the evidence adduced by the petitioner/complainant could not show that the 1st respondent had committed any misappropriation as alleged in the complaint. To come to this conclusion, the trial court had considered the entire evidence of Pws 1 to 3, out of whom PW1 is the present Secretary of the petitioner society.

He had stated that he is the Secretary of the petitioner society and as per the audit report, there was falsification. But, he had not produced any account audited to show that amount has been misappropriated by the 1st respondent. Pws 2 and 3 are the two subscribers of the chitty conducted by the petitioner society and, according to these witnesses, they bid their chitties for a lesser price and the vouchers issued by the 1st respondent show that they are in receipt of the amount covered by the vouchers. They have a specific case before the court that they have not sustained any loss in connection with the bidding of the chitty conducted by the society. In the above circumstances, the evidence of Pws 2 and 3 would not prove that any misappropriation has been committed by the 1st respondent. That apart, the trial court also found that none of the records of the society has been produced by PW1 to show that falsification has been committed by the 1st respondent and that allegation is not founded in any of the evidence adduced by the petitioner/complainant.

In the above circumstances, this Court is of the view

that the finding of the trial court does not require any interference. Accordingly, special leave to appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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